

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.390 OF 2007

IN

SUIT NO.220 OF 2006

Hatim Rasulbhai Chitalwala & Ors. ...Plaintiffs
V/s.

Saifuddin Badruddin Chitalwala & ors....Defendants

Shri.Ashish Kamath i/b M/s.Apex Law Partners for
Plaintiffs.

Shri.Simil Purohit i/b M/s.Lokhandwala & Co. for
Defendant No.7 to 12.

CORAM : S.A.BOBDE, J.

DATED : 13/02/2007

P.C.:-

1. This notice of motion is taken out by the plaintiffs for appointment of a receiver to take possession of flat No.4 on the first floor of Chitalwala Mansion, 165 New Agra Road, Kurla, Mumbai.

2. The suit is for partition by metes and bounds in respect of suit property which consists of land and building thereon. There are twelve flats and two garages in the suit building. Six flats are occupied by tenants who are third parties. Defendant No.1 to 6 are in use and occupation of two flats and defendants No.7 to 12 are in use and occupation of four flats.

Earlier, the plaintiff took out notice of motion No.264 of 2006 which was decided on 28th August, 2006. It appears that the plaintiff had sought the appointment of a receiver in respect of flat No.4 on the ground that defendant No.10 has obtained surrender of the tenancy in respect of flat from one Dr.Abdul Razaak Rahimtullah. However, it appears that defendant No.10 seems to have persuaded this court that Dr.Abdul Razaak Rahimtullah continued to be tenant. On this representation being made, this court directed defendant No.10 to file affidavit bearing out stand that Dr.Abdul Razaak Rahimtullah is still a tenant and that he has permitted defendant No.10 to temporarily occupy flat No.4. In para 6, this court clearly observed that if such an affidavit is not filed within four weeks, plaintiffs will be entitled to apply for further ad-interim orders. This Court thus did not make any order with regard to a receiver.

3. Admittedly four weeks have long expired. In fact this court granted extension of time. Yet no affidavit of Dr.Abdul Razaak Rahimtullah has been filed. Even today it is submitted by the learned counsel for the Defendant No.10 that Dr.Abdul Razaak

Rahimtullah is in London and wants to file an affidavit after consulting an advocate in India. This is not what contemplated by this court at all and only thing that needs to be considered is whether defendant No.10 is taking undue advantage of the situation by obtaining the surrender of tenancy of flat No.4 from Dr.Abdul Razaak Rahimtullah and therefore disturbing equities between parties. From the conduct of defendant No.10 it seems that he is doing so. This is clear case where an adverse inference is liable to be drawn from the conduct of defendant No.10 who initially resisted an appointment of receiver by suggesting to the court that Dr.Abdul Razaak Rahimtullah is still the tenant. Since, it appears now that defendant No.10 is taking undue advantage, I am of the view that it is a fit case for appointment of a receiver in respect of flat No.4.

4. In the circumstances, there shall be interim relief in terms of prayer clause(b). Receiver is directed to consider offer of the plaintiffs and defendant No.10 for appointment of an agent for flat No.4 for payment of royalty.

5. Mr.Purohit learned counsel for defendant No.10

submitted that tenancy right of Dr.Abdul Razaak Rahimtullah may be protected. Since there is no evidence that Dr.Abdul Razaak Rahimtullah continues to be tenant, it is not possible to accept the request of learned counsel for the defendant No.10. Clearly, if Dr.Abdul Razaak Rahimtullah or anybody has any grievance they may raise it by way of appropriate proceeding. Application for stay of this order is rejected.

(S.A.BOBDE, J.)